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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/614,712	07/07/2003	Thomas P. Chojnacki	103524.0515869	7930
7590	07/27/2004		EXAMINER	
FROST BROWN TODD LLC 2200 PNC Center 201 E. Fifth Street Cincinnati, OH 45202-4182			CEGIELNIK, URSZULA M	
			ART UNIT	PAPER NUMBER
				3712

DATE MAILED: 07/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/614,712	CHOJNACKI ET AL.	
	Examiner	Art Unit	
	Urszula M Cegielnik	3712	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 06 July 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-16 is/are pending in the application.
 - 4a) Of the above claim(s) 16 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-12 and 14-16 is/are rejected.
- 7) Claim(s) 13 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

DETAILED ACTION

Newly submitted claim 16 is directed to an invention that is independent or distinct from the invention originally claimed.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 16 withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 5-7, 8, 11, 12, 14, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Daravina.

Daravina discloses a toy comprising a ball, the ball comprising a spherical, rare earth magnet (29, the magnet is a rare earth magnet), the spherical rare earth magnet having a first magnetic field, wherein the first magnetic field is of sufficient strength to attract the ball to a proximate ferrous material and to provide a reaction of the ball to a proximate ferrous material and to provide a reaction of the ball to a proximate magnetic source having a second magnetic field, the reaction being selected from the group consisting of attraction and repulsion and an elastic shell encompassing the spherical rare earth magnet, the elastic shell providing sufficient elasticity for causing the ball to

bounce upon impact of the ball with a solid surface (*the elastic shell is constructed of a polymer, which includes materials such as elastopolymers and polymeric foams, and as such, is capable of bouncing on a solid surface*), the first magnetic field is of sufficient strength to overcome the elasticity when the solid surface is comprised of materials selected from the group consisting of ferrous material and magnetic material (col. 3, lines 43-44); a target layer (12) comprising material selected from the group consisting of ferrous material and magnetic material (col. 3, lines 43-44); the magnetic field is of sufficient strength to overcome the elasticity when the ball impacts the target layer and to cause the ball to magnetically attach to the target layer when the ball and the target layer come in contact with each other; the target layer has goals formed therein; the target layer comprises a plurality of ferrous portions (the portions of reference numeral 12 which do not include elements denoted by reference numeral 30); the target layer comprises a plurality of magnetic portions (*the portions of reference numeral 12 which encompass elements denoted by reference numeral 30*); the target layer comprising a sheet of metal (col. 3, lines 43-44) with an image imprinted on it (e.g. a simulated soccer playing field).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Daravina in view of Gittens.

Daravina discloses the claimed invention except for the spherical rare earth magnet comprises a neodymium iron boron (NdFeB) and a samarium cobalt (SmCo) magnet.

Gittens et al. disclose a magnet in the form of a rare earth magnet (NdFeB, SmCo) (col. 4, lines 22-32).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a magnet in the form of a rare earth magnet as taught by Gittens et al., since Gittens et al. state at col. 4, lines 27-29, that such a modification would allow the magnet to have added strength as well as a reduced size (e.g. making the overall device much lighter).

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Daravina in view of Nelson.

Daravina discloses the claimed invention except for the rare earth magnet being made of AlNiCo.

Neilson teaches a magnet made of AlNiCo (col. 2, lines 56-57).

It would have been obvious to one having ordinary skill at the time the invention was made to provide a magnet made of AlNiCo) as taught by Neilson as an alternate magnet for use in a ball.

Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Daravina in view of Murphy.

Murphy et al. teach a ball made of polymer foam (an elastopolymer) (col. 1, lines 6-10).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the elastic shell made of polymer foam (an elastopolymer) as taught by Murphy et al., since Murphy et al. state at col. 1, line 6-10, that such a modification would provide improved compositions having densities and rebound properties particularly useful in manufacturing of game balls

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Daravina in view of Henderson.

Daravina discloses the claimed invention except for the shell formed from two hemispherical portions.

Henderson teaches forming a shell (see Figure 3, for example) from two hemispherical portions (15,16).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to construct the shell from two hemispherical portions as taught by Henderson, since Henderson states at col. 1, lines 65-72 through col. 2, lines 1-2 that such a modification would reduce costs of producing the ball by molding all components together at the same time to reduce manufacturing costs.

Allowable Subject Matter

Claim 13 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Urszula M. Cegielnik whose telephone number is 703-306-5806. The examiner can normally be reached on Monday through Friday, from 5:30AM - 2:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris H. Banks can be reached on 703-308-1745. **The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306 for both regular and After Final communications.**

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Customer Service at 703-306-5648.

Urszula M. Cegielnik
Assistant Examiner
Art Unit 3712



DERRIS H. BANKS
SUPERVISORY PATENT EXAMINER
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